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Filing date: **06/21/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053426
Party	Defendant Scientific Toys, Ltd.
Correspondence Address	CHESTER ROTHSTEIN AMSTER ROTHSTEIN EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016 UNITED STATES ptodocket@arelaw.com, jdoran@arelaw.com, nzipkin@arelaw.com
Submission	Other Motions/Papers
Filer's Name	Neil M. Zipkin
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Signature	/Neil M. Zipkin/
Date	06/21/2012
Attachments	Motion to Preclude Late Designation of Witnesses.pdf (10 pages)(348486 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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BACHMANN INDUSTRIES, INC.,	:	
	:	
Petitioner/Counterclaim Respondent,	:	
	:	
v.	:	Cancellation No. 92053426
	:	
SCIENTIFIC TOYS, LTD.,	:	
	:	
Respondent/Counterclaim Petitioner.	:	
-----X		

MOTION TO PRECLUDE LATE DESIGNATION OF WITNESSES

Respondent/Counterclaim Petitioner Scientific Toys, Ltd. (“Scientific”), through its attorneys Amster, Rothstein & Ebenstein LLP, hereby objects to the belated disclosure of Edward Winter, CFO of Bachmann Industries, Inc. and Jeff Troy, former editor, *Hobby Merchandiser Magazine* in Petitioner’s Pretrial Disclosures and Petitioner’s Supplemental Disclosures, both served on June 20, 2012; and moves for an Order precluding testimony from such witnesses.

Scientific objects to the disclosure of Mr. Winter long after the close of discovery on November 12, 2011. Mr. Winter, as the Chief Financial Officer of Bachmann Industries, was certainly known to Bachmann long before the close of discovery. He was not identified in Bachmann’s Initial Disclosures. The belated disclosure of such witness is nothing more than an attempt by Bachmann to prevent Scientific from taking a discovery deposition of Mr. Winter. The other witness disclosed by Bachmann, Douglas Blaine, Vice President of Marketing, was deposed by Scientific Toys prior to the close of discovery.

Likewise, the belated disclosure of Jeff Troy, a third party formerly employed by *Hobby Merchandiser Magazine*, likewise seems calculated to improperly prevent Scientific from properly learning the extent and limitations of this witness' knowledge. Mr. Troy was not disclosed until June 20, 2012. Further, the designation of Mr. Troy appears to be nothing more than a backdoor attempt to circumvent the Board's Scheduling Order. Notwithstanding the characterization, Mr. Troy is likely to testify as an "expert" on the model train field. Expert disclosures were due by October 13, 2011. Bachmann made no disclosure of Mr. Troy or any other witness as an "expert."

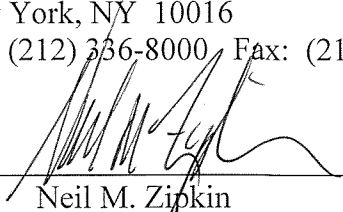
In view of the above, it is respectfully requested that an Order be issued by the Board denying Bachmann the right to provide trial testimony from either Mr. Winter or Mr. Troy, thereby preventing Bachmann from unduly prejudicing Scientific as to the testimony of Mr. Winter and circumventing the Board's Scheduling Order as to the testimony of Mr. Troy.

Copies of Petitioner's Supplemental Disclosures and Petitioner's Pretrial Disclosures, both served June 20, 2012 are attached.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Registrant/Petitioner
Scientific Toys, Ltd.
90 Park Avenue
New York, NY 10016
Tel: (212) 336-8000 Fax: (212) 336-8001

Dated: New York, New York
June 21, 2012

By: 
Neil M. Zipkin
Chester Rothstein

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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BACHMANN INDUSTRIES, INC.,	:	
Petitioner,	:	
v.	:	Cancellation No.: 92053426
SCIENTIFIC TOYS, LTD.,	:	
Respondent.	:	
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PETITIONER'S PRETRIAL DISCLOSURES

Petitioner Bachmann Industries, Inc. ("Bachmann"), through its undersigned counsel and pursuant to Fed.R.Civ.P. 26(a)(3) and 37 CFR § 2.121(e), hereby submits the following pretrial disclosures.

Witnesses That Bachmann Expects to Present

1. Douglas Blaine
Vice President of Marketing, Bachmann Industries, Inc.
1400 E. Erie Avenue
Philadelphia, PA 19124

2. Edwin Winter
CFO, Bachmann Industries, Inc.
1400 E. Erie Avenue
Philadelphia, PA 19124

Mr. Blaine and Mr. Winter are expected to testify regarding Bachmann's business, its customers, its products, its marks, its registrations, its sales, its trade channels, its industry, and third party activities.

The following documents and things may be introduced as exhibits during the testimony of these witnesses, in addition to the exhibits introduced in support of Bachmann's motion for summary judgment: Bachmann's trademark registrations; materials produced during these proceedings as BI 0001-3375, including Bachmann's sales information, products, product packaging, license agreements and royalty statements, and advertisements and other promotional and informational material; material with respect to

Bachmann's policing of its marks; and discovery responses provided by Scientific Toys, Ltd. during these proceedings.

3. Jeff Troy
Former Editor, Hobby Merchandiser Magazine
Member, Model Aviation Hall of Fame
759 New Holland Ave.
Lancaster, PA 17602
717-917-3670

Mr. Troy is expected to testify regarding his personal knowledge of Bachmann Industries as a company in the toy train industry and regarding that industry.

The following documents and things may be introduced as exhibits during the testimony of this witness: Advertisements and products and packaging produced by Bachmann during these proceedings, and discovery responses provided by Scientific Toys, Ltd. during these proceedings.

Witnesses That Bachman May Present

4. Y.K. Chan, President
5. Louis Chan, Vice President, Sales and Marketing
6. Joyce Chan, Vice President, Business Development
7. Sam Chan, Vice President, Operation
8. Maggie Chong, Executive Secretary

All located at Scientific Toy, Ltd.
1108 New Mandarin Tower Plaza B
14 Science Museum Road
TST East, Kowloon, Hong Kong

Any or all may be called to testify regarding Scientific's adoption, use, and registration of its EZTEC mark in connection with toy trains, and/or regarding Scientific's knowledge of Bachmann's E-Z family of marks.

The following documents and things may be introduced as exhibits during the testimony of these witnesses: Discovery responses provided by Scientific Toys, Ltd. during these proceedings.

Date: June 20, 2012

By: 

ROBERTA JACOBS-MEADWAY, ESQ.
JAY K. MEADWAY, ESQ.
BRIDGET HEFFERNAN LABUTTA, ESQ.
Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 S. 16th Street, 22nd Floor
Philadelphia, PA 19102
Phone: 215-851-8522
E-Mail: rjacobsmeadway@eckertseamans.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Petitioner's Pretrial Disclosures was served on the attorney of record in this matter via electronic mail and FedEx on the date indicated below.

Chester Rothstein
Neil Zipkin
Amster Rothstein & Ebenstein LLP
90 Park Avenue
New York, NY 10016
crothste@arelaw.com
nzipkin@arelaw.com

Date: June 20, 2012

By: 

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BACHMANN INDUSTRIES, INC.,	:	
Petitioner,	:	
v.	:	Cancellation No.: 92053426
SCIENTIFIC TOYS, LTD.,	:	
Respondent.	:	
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PETITIONER'S SUPPLEMENTAL DISCLOSURES

Petitioner Bachmann Industries, Inc. ("Bachmann"), through its undersigned counsel, hereby submits the following disclosures to supplement its Initial Disclosures served on April 1, 2011. These supplemental disclosures are being made after consideration of information made available since April 1, 2011, and Bachmann reserves the right to continue to supplement its disclosures as additional witnesses and/or documents may be investigated.

Persons Having Knowledge:

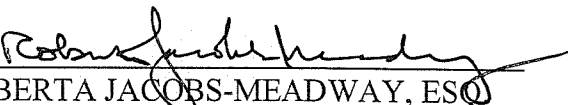
1. Ed Winter
CFO, Bachmann Industries, Inc.
1400 E. Erie Avenue
Philadelphia, PA 19124

Mr. Winter is knowledgeable with respect to Bachmann's business, its customers, its products, its sales, its marks, its registrations, its industry, its trade channels and third party activities.

2. Jeff Troy
Former Editor, Hobby Merchandiser Magazine
Member, Model Aviation Hall of Fame
759 New Holland Ave.
Lancaster, PA 17602
717-917-3670

Mr. Troy is knowledgeable with respect to Bachmann Industries, Inc. and its marks and products and as to the toy train industry in general.

Date: June 20, 2012

By: 
ROBERTA JACOBS-MEADWAY, ESQ.
JAY K. MEADWAY, ESQ.
BRIDGET HEFFERNAN LABUTTA, ESQ.
Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 S. 16th Street, 22nd Floor
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Phone: 215-851-8522
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ATTORNEYS FOR PETITIONER

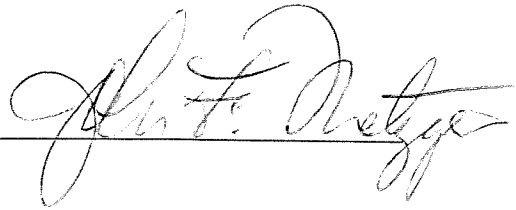
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Petitioner's Pretrial Disclosures was served on the attorney of record in this matter via electronic mail and FedEx on the date indicated below.

Chester Rothstein
Neil Zipkin
Amster Rothstein & Ebenstein LLP
90 Park Avenue
New York, NY 10016
crothste@arelaw.com
nzipkin@arelaw.com

Date: June 20, 2012

By: _____

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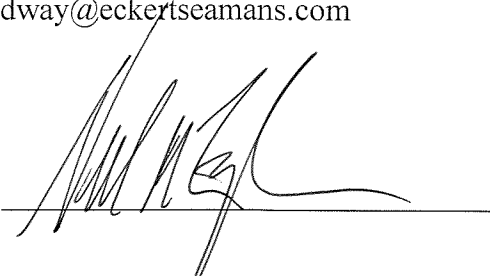
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing MOTION TO PRECLUDE LATE DESIGNATION OF WITNESSES has been served on Petitioner by delivering said copy by (1) First Class U.S. Mail, postage prepaid; and (2) email, to counsel for Petitioner as follows:

- (1) Roberta Jacobs-Meadway, Esq.
Eckert Seamans Cherin & Mellott LLC
50 South 16th Street
Two Liberty Place, 22nd Floor
Philadelphia, PA 19102
- (2) e-mail: rjacobsmeadway@eckertseamans.com

Dated: June 21, 2012

By: _____

A handwritten signature in black ink, appearing to read 'RJM', is written over a horizontal line.